

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



DIXIE TEACHERS ASSOCIATION, CTA/NEA,)
)
Charging Party,)
)
v.)
)
DIXIE ELEMENTARY SCHOOL DISTRICT,)
)
Respondent.)

Case No. SF-CE-634

PERB Decision No. 298

March 29, 1983

Appearances; Kirsten L. Zerger, Attorney for Dixie Teachers Association, CTA/NEA; Richard V. Godino, Attorney (Breon, Galgani, Godino & O'Donnell) for Dixie Elementary School District.

Before Gluck, Chairperson; Tovar and Morgenstern, Members.

DECISION

GLUCK, Chairperson: The Dixie Elementary School District (District) excepts to the attached hearing officer's decision finding that it violated subsections 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA)¹ by refusing

¹The EERA is codified at Government Code section 3540 et seq. All references hereafter will be to the Government Code unless otherwise indicated. Subsections 3543.5(a), (b) and (c) state:

It shall be unlawful for a public school employer to:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

to negotiate with the Dixie Teachers Association, CTA/NEA terms and conditions of employment for substitute and temporary teachers. The District contends that the Public Employment Relations Board (PERB) unlawfully accreted the two employment classifications to a unit of full-time classroom teachers in Dixie Elementary School District (8/11/81) PERB Decision No. 171. It maintains that, because that decision was contrary to law, the present refusal to bargain charge should be dismissed.

DISCUSSION

The District's only defense to the refusal to bargain charge is that the underlying unit modification, PERB Decision No. 171, supra, was unlawful. However, it has failed to offer either new facts or arguments of law supporting its contention and simply restates the argument it made in PERB Decision No. 171. We were not persuaded by the argument then and find now that it fails to excuse the District's refusal to negotiate working conditions for substitute and temporary employees who have been accreted to the unit. This conduct likewise denies employees and the employee organization their rights guaranteed by the statute.²

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

²San Francisco Community College District (10/12/79) PERB Decision No. 105.

ORDER

Upon the foregoing findings of fact, conclusions of law, and the entire record in this case, it is hereby ORDERED that the Dixie Elementary School District shall:

A. CEASE AND DESIST FROM:

1. Violating subsections 3543.5(a), (b) and (c) of the Educational Employment Relations Act by failing and refusing to meet and negotiate in good faith with the exclusive representative on matters within the scope of representation, as defined by section 3543.2, for temporary and substitute teachers;

2. Denying the Dixie Teachers Association, CTA/NEA its right to represent such unit members by failing and refusing to meet and negotiate in good faith about matters within the scope of representation; and

3. Interfering with such employees' right to select an exclusive representative and participate in its activities by failing and refusing to meet and negotiate with the exclusive representative on matters within the scope of representation.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS:

1. Upon request, meet and negotiate with the Dixie Teachers Association, CTA/NEA on matters within the scope of representation for temporary and substitute employees.

2. Within thirty (30) workdays of service of this Decision, post at all school sites and all work locations, where notices to employees are customarily placed, copies of the appended Notice to Employees (Appendix). Such posting shall be maintained for a period of thirty (30) consecutive workdays and reasonable steps shall be taken to insure that such Notices are not reduced in size, defaced, altered, or covered by any material.

3. Notify the San Francisco regional director of the Public Employment Relations Board in writing within forty-five (45) workdays following the service of this Decision of the steps taken by the Dixie Elementary School District to comply with this Order.

Members Tovar and Morgenstern joined in this Decision.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

AN AGENCY OF THE STATE OF CALIFORNIA

After a hearing in Unfair Practice Case No. SF-CE-634,
Dixie Teachers Association, CTA/NEA v. Dixie Elementary School
District, in which all parties had a right to participate, it
has been found that the Dixie Elementary School District:

Unlawfully failed and refused to negotiate with the Dixie
Teachers Association, CTA/NEA on matters within the scope of
representation for temporary and substitute teachers who were
accreted to the certificated unit, and thereby denied the Dixie
Teachers Association, CTA/NEA its right to represent such
employees and interfered with such employees' right to select
an exclusive representative and participate in its activities.

The Dixie Elementary School District agrees, upon request,
to meet and negotiate with the Dixie Teachers Association,
CTA/NEA about matters within the scope of representation for
such substitute and temporary employees.

Copies of this Notice are to be posted at all work
locations where notices to employees are customarily placed and
will remain there for thirty (30) consecutive workdays.

DIXIE ELEMENTARY SCHOOL DISTRICT

Dated: _____ By: Authorized Agent of the District

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST
THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST
NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED BY ANY
MATERIAL.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



DIXIE TEACHERS ASSOCIATION,
CTA/NEA,

Charging Party,

v.

DIXIE ELEMENTARY SCHOOL DISTRICT,

Respondent.

Unfair Practice
Case No. SF-CE-634

PROPOSED DECISION
(4 / 7 / 8 2)

Appearances; Kirsten L. Zerger, attorney for the Dixie Teachers Association, CTA/NEA; Diana K. Smith, attorney (Breon, Galgani, Godino & O'Donnell) for the Dixie Elementary School District.

Before Gerald A. Becker, Administrative Law Judge.

PROCEDURAL HISTORY

This charge was filed on January 20, 1982 by the Dixie Teachers Association, CTA/NEA (hereafter Association) against the Dixie Elementary School District (hereafter District) alleging the District refuses to negotiate the wages, hours and other terms and conditions of employment for certain day-to-day substitute and temporary teachers. Violations of Government Code subsections 3543.5 (a), (b) and (c) of the Educational Employment Relations Act (hereafter EERA) are alleged.¹

¹EERA is codified at Government Code section 3540 et seq. All statutory references are to the Government Code unless otherwise stated.

Since this case involves a "technical" refusal to bargain by the District in order to obtain judicial review of a prior PERB decision placing these employees in a negotiating unit represented by the Association,² the parties agreed to waive the normal procedure of a hearing and written briefs. Instead, they stipulated to the facts and requested the matter be expedited, either by transfer to the PERB itself for decision or by proposed decision by this administrative law judge. By letter dated March 17, 1982, the chief administrative law judge designated this matter as one to be expedited for proposed decision by the undersigned.

ISSUE

In violation of subsections 3543.5(a), (b) and (c), did the District unlawfully refuse to negotiate with the Association over the terms and conditions of employment of substitute and temporary employees in issue?

FINDINGS OF FACT

Dixie Elementary School District is an employer and Dixie Teachers Association, CTA/NEA is an employee organization within the meaning of the EERA.

²Dixie Elementary School District (8/11/81) PERB Decision NO. 171. Subsection 3542(a)(2) provides for judicial review of a unit determination decision "when the issue is raised as a defense to an unfair practice complaint."

Following are the essential facts stipulated to by the parties.

On September 8, 1976 the District recognized the Association as the exclusive representative of a unit of certificated employees. On December 16, 1976 the parties entered into a unit clarification agreement which excluded from the unit substitute and temporary employees employed for less than 75 percent of the school year.

On August 9, 1979 the Association filed a petition for unit modification seeking to include the substitute employees in the unit. The unit modification petition later was amended to include the temporary employees.³

On August 11, 1981, in Dixie Elementary School District, supra, the PERB itself affirmed the hearing officer's decision adding the substitute and temporary employees to the existing certificated negotiating unit represented by the Association.

On October 28, 1981 the Association presented its initial negotiations proposal to amend the existing collective bargaining agreement as it related to the employees added to the unit.

Despite the Association's continuing request to negotiate, the District has and continues to refuse to negotiate over the terms and conditions of employment of all the employees added to the unit in PERB Decision No. 171.

³unit modification procedures are found in PERB Regulation 33260 et seq.

DISCUSSION AND CONCLUSIONS OF LAW

The District raises no defense to this unfair practice charge other than that it disagrees with PERB Decision No. 171 including substitute and temporary employees in the same negotiating unit with other certificated employees.

This case presents the same procedural posture as Redondo Beach City School District (10/14/80) PERB Decision No. 140, in which a school district refused to negotiate with an exclusive representative in contravention of a previous PERB unit decision. The PERB affirmed the hearing officer's conclusion that

In the absence of the presentation of newly discovered or previously unavailable evidence or special circumstances relitigation of PERB's unit determination is not warranted. PERB's unit determination is therefore binding precedent. (Redondo Beach, supra, at p. 3 of hearing officer decision.)

Therefore, the District's admitted refusal to negotiate with the Association over the terms and conditions of employment of the substitute and temporary employees in issue constitutes a refusal to negotiate in good faith in violation of subsection 3543.5(c). There also are derivative violations of the Association's subsection 3543.5(b) right to represent unit members, and of the affected employees' subsection 3543.5 (a) right to be represented by an exclusive representative of their own choosing. San Francisco Community College District (10/12/79) PERB Decision No. 105.

REMEDY

Under Government Code section 3541.5(c) the Public Employment Relations Board has:

. . . the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action . . . as well as effectuate the policies of this chapter.

Having found the District violated subsections 3543.5(a), (b) and (c) by refusing to negotiate with the Association with respect to the substitute and temporary employees, it is appropriate to order the District to cease and desist from this unlawful behavior, and upon request to meet and negotiate with the Association with respect to proposals made on behalf of these employees.

It also is appropriate that the District be required to post a notice incorporating the terms of the order. The notice should be subscribed by an authorized agent of the District indicating that it will comply with the terms thereof. The notice shall not be reduced in size. Posting such a notice will provide employees with notice that the District has acted in an unlawful manner and is being required to cease and desist from this activity and to restore the status quo. It effectuates the purposes of the EERA that employees be informed of the resolution of the controversy and will announce the District's readiness to comply with the ordered remedy. See

Placerville Union School District (9/18/78) PERB Decision No. 69. In Pandol and Sons v. ALRB and UFW (1979) 98 Cal.App.3d 580, 587, the California District Court of Appeal approved a posting requirement. The U.S. Supreme Court approved a similar posting requirement in NLRB v. Express Publishing Co. (1941) 312 U.S. 426 [8 LRRM 415].

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, and pursuant to section 3541.5 (c), it is hereby ordered that the Dixie Elementary School District, its governing board and its representatives shall:

1. CEASE AND DESIST FROM:

(a) Refusing to negotiate in good faith with the Association in violation of subsection 3543.5(c).

(b) Denying the Association its right to represent unit members in violation of subsection 3543.5(b).

(c) Denying unit members their right to be represented by an exclusive representative of their own choosing in violation of subsection 3543.5(a).

2. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE ACT:

(a) Upon request, meet and negotiate in good faith with the Association as the exclusive representative of all unit members.

(b) Within five (5) workdays after this decision becomes final, prepare and post copies of the NOTICE TO EMPLOYEES attached as an appendix hereto, for at least thirty (30) workdays at its headquarters offices and in conspicuous places at the location where notices to certificated employees are customarily posted. It must not be reduced in size and reasonable steps should be taken to see that it is not defaced, altered or covered by any material.

(c) Within twenty (20) workdays from service of the final decision herein, give written notification to the San Francisco Regional Director of the Public Employment Relations Board, of the actions taken to comply with this Order. Continue to report in writing to the Regional Director thereafter as directed. All reports to the Regional Director shall be concurrently served on the charging party herein.

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final on April 27, 1982, unless a party files a timely statement of exceptions. See California Administrative Code title 8, part III, section 32300. Such statement of exceptions and supporting brief must be actually received by the executive assistant to the Board at the headquarters office of the Public Employment Relations Board in Sacramento before the close of business (5:00 p.m.) on April 27, 1982, in order to be timely filed. See California Administrative Code,

title 8, part III, section 32135. Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall be filed with the Board itself. See California Administrative Code, title 8, part III, sections 32300 and 32305 as amended.

Dated: April 7, 1982

GERALD A. BECKER
Administrative Law Judge